opinion, warranted disciplinary action and the imposition of a penalty.

Under section 80 of the Legal Profession Act, we could impose one of three penalties:

(a) strike the respondent off the roll of advocates and solicitors;

(b) suspend him from practice for any period not exceeding two years; or

(c) censure him.

In the circumstances of this case, we were of the opinion that to impose on the respondent either of the first two penalties would be unduly harsh. Accordingly, we ordered that the respondent be censured.

We would emphasize that a contravention or failure to comply with any of the provisions of the Act or of any rules made thereunder which warrants disciplinary action could, in an appropriate case, attract a penalty more severe than that of censure. It is incumbent upon all practising advocates and solicitors to keep themselves apprised of the provisions of the Act and Rules made thereunder, particularly those provisions and rules which govern the practice of the profession.

Order accordingly.

Solicitors: *Murphy & Dunbar; Mak & Partners.*

PUBLIC PROSECUTOR v. LAU CHI SING

[O.Cr.J. (Lai Kew Chai & Thean JJ.) November 25, 1987]

[Singapore – Criminal Case No. 29 of 1985]

Criminal Law – Misuse of drugs – Drug trafficking – "Trafficking" and "Transport" – Meaning of – Misuse of Drugs Act (Cap. 185), s. 2, 5, 17 & 18.

The accused was charged with having trafficked in controlled drugs by transporting 242.85 grammes of diamorphine from Ghim Peng Hotel in Geylang to Singapore Changi Airport.

The defence of the accused was that he believed he was transporting only certain jewellery and not drugs. These items which he thought he was having were allegedly given to him by another man.

Held: (1) following *Ong Ah Chuan* v. *Public Prosecutor*,[2] the test for determining whether an act of transporting drugs from one point to another falls within the meaning of "transport" in section 2 is the purpose for which the drugs are being transported. If the drugs are transported for the purpose of distributing or giving them to one or more persons, known or in contemplation, at the intended destination then that act of transporting falls within the statutory meaning and is an act of trafficking; if, on the other hand, the purpose is for the transporter's own consumption, such act of transporting is not trafficking within the meaning of section 2;

(2) so long as the drugs are transported for the purpose of distribution, it is immaterial whether the intended distribution takes place here, or abroad. Logically, it must follow that such a mover commits the offence immediately after he has begun his journey of moving the drugs, irrespective whether he reaches his destination or not; it is the act of transporting drugs for the purpose of distribution which is one of the evils against which section 5 is directed;

(3) the accused had not rebutted the presumptions by any credible evidence and the accused was convicted.

Cases referred to:

(1) *Wong Kee Chin* v. *Public Prosecutor* [1979] 1 M.L.J. 157.

(2) *Ong Ah Chuan* v. *Public Prosecutor* [1981] 1 M.L.J. 64.

CRIMINAL TRIAL.

Ismail Hamid (Deputy Public Prosecutor) for the Public Prosecutor.

Joseph Gay for the accused.

Cur. Adv. Vult.

Thean J. (delivering the judgment of the court): The accused, Lau Chi Sing, is charged with having trafficked in controlled drugs by transporting 242.85 grammes of diamorphine from Ghim Peng Hotel, Geylang Road, to Singapore Changi Airport between 7.30 p.m. and 7.55 p.m. on October 16, 1984. The charge against him is as follows:

"You, Lau Chi Sing, are charged that you, on or about the 16th day of October 1984, at between 7.30 p.m. and 7.55 p.m., in Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Cap. 185 (1985 Revised Ed.) to wit, by transporting 242.85 grams of diamorphine from Ghim Peng Hotel, Geylang Road to Singapore Changi Airport in N.T.U.C. taxi No. SH 8477M, without any authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(a) and punishable under section 33 of the Misuse of Drugs Act (Cap. 185) Revised Edition 1985."

The accused is a Hong Kong national. He arrived in Singapore from Kuala Lumpur on the evening of October 15, 1984 and checked into Ghim Peng Hotel at Geylang Road at about 10.00 p.m. on the same evening. On the following day, at about 5.00 p.m., a party of narcotics officers, led by Senior Narcotics Officer, Lim Chei Yoo, went to Ghim Peng Hotel and kept a surveillance on the accused. At about 6.15 p.m., the accused left the hotel and went to Yokoso Shopping Centre to do some shopping; he was trailed by two narcotics officers. He returned to the hotel at about 7.20 p.m.

At about 7.30 p.m., the accused checked out of the hotel and took a taxi, SH 8477M, to Changi Airport. He was then carrying a soft bag, a radio cassette player and a camera, and had a pouch tied round his waist. On arrival at the airport he went to counter 112 in row 7 and checked in for the flight to Amsterdam. At the counter, he produced his passport, airline ticket and some cash; he did not check in any luggage. Shortly thereafter, he collected from the officer in attendance at the counter his passport and boarding pass which he placed in his pouch. As he was about to leave the counter, Senior Narcotics Officer, Lim Chei Yoo, approached him and arrested him.

The accused was brought to the office of the Central Narcotics Bureau where he was searched. No drug, however, was found on him. The soft bag was searched, and amongst other things found therein were three National dry cell batteries and two Hi-Watt dry cell batteries. While the officers were examining these batteries, the accused, for some strange reasons, but presumably to show to the officers that the radio cassette player was really in a working condition, switched it on by pressing the appropriate button. This action of the accused was unfortunate for him, because it alerted the officers and they thereupon examined that equipment. All the batteries were taken out from the battery compartment. There were ten of them: eight Hi-Watt batteries and two National Hi-Top batteries, and all of them were examined and broken up; the Hi-Watt batteries were found to contain some white powder but no white powder was found in the five National batteries. All the batteries and their contents were thereafter sent to the Department of Scientific Services for examination and it was found that the eight Hi-Watt batteries contained diamorphine and the other two Hi-Watt batteries contained strychnine. The National batteries were found to contain a black substance which was analysed for the presence of diamorphine and morphine; but no diamorphine or morphine was detected therein. The total quantity of diamorphine was 242.85 grammes, having a street value of about $290,000.

At the office of the Central Narcotics Bureau, Senior Narcotics Officer, S. Vijakumar, with the assistance of Wu Nam Yong, a certificated interpreter, recorded a statement from the accused under section 122(6) of the Criminal Procedure Code (Cap. 68, 1985 Ed.). That statement was not objected to by counsel for the accused and was admitted. It is as follows:

> "I came to know one Low Fu Chye in Hong Kong about 6 months back. He asked me whether I want to make any extra money. I agreed. He told me to smuggle things. I was under the impression that I was to smuggle jewelleries that were robbed in Hong Kong. He then gave me HK$3,500 and told me to fly to Bangkok and stay in a hotel, the name of which I forgot. I was to wait in the hotel for his phone call. About one week later he came to the hotel in Bangkok and gave me HK$10,000 as my reward for smuggling. I stayed in Thailand for 18 days and then took a plane to Kuala Lumpur. He told me a Thai male will hand me something on board the plane. While on board the plane a Thai male gave me ten dry cell batteries which I then placed into the cassette player I had with me which I had bought in Hong Kong on the instructions of Low Fu Chye. I thought the batteries contained stolen goods like diamond. Low Fu Chye then met me in Mandarin Hotel in Kuala Lumpur and he gave me US$700/– for expenses. He told me to take a plane to Singapore and then from Singapore to board a plane to Amsterdam as soon as possible. When I checked in for my flight to Vienna on October 16, 1984, I was arrested. I am poor and out of greed I agreed to smuggle only stolen goods. I did not know that the batteries contained 'Pak Fun' as they looked normal and when I used it in the cassette they worked properly. I have told all that I know."

There was really no dispute on the evidence adduced by the prosecution and at the close of the case for the prosecution, no submission was made by the counsel on behalf of the accused. Clearly, the prosecution had made out a case which, if unrebutted, would warrant a conviction of the offence charged. The accused therefore was called to enter upon his defence.

The accused elected to give evidence. He said that he did not know that the Hi-Watt batteries contained diamorphine. He had not seen diamorphine before, but he knew of the punishment for trafficking in drugs. As regards his association with Low Fu Chye ("Low"), he said that he met Low in Hong Kong. He wanted to seek employment in Europe and Low promised him employment there. Low asked him to bring diamonds to

Europe and offered him a reward of HK$10,000. The reason for his seeking employment in Europe was that he gathered that Hong Kong would have a difficult time after 1997 and many residents intended to leave Hong Kong to take up employment abroad. He then gave evidence of the overseas trips he made. The first trip was one he made together with Low and they went to Thailand; that trip was purely for a holiday. The second trip was also to Thailand and on that trip he was shown diamonds and was asked to bring the diamonds to Europe. Low told him that those were diamonds taken in the course of robberies committed in Hong Kong. From Thailand, he went to Kuala Lumpur and then to Vienna, Amsterdam and elsewhere, and returned to Hong Kong. He confirmed that on that trip to Europe he carried diamonds in a radio cassette player, which was similar to the one seized by the narcotics officers. However, he did not know where and how the diamonds were packed and placed in the cassette player. Low never informed him.

Then came the third trip – the trip in which he was arrested. He said Low had secured employment for him in Amsterdam, and on this trip he was going to take up employment there. Since he was going there, he was asked by Low to carry diamonds to Amsterdam one more time. He first proceeded to Bangkok alone where he met Low, and they stayed there for about one week. Low gave him HK$10,000 and asked him to wait. He waited and two days prior to his departure for Kuala Lumpur, Low gave him an airline ticket to go to Kuala Lumpur to wait for him at a hotel, and told him that on board the plane, a Thai male would give him ten batteries. While on board the plane, a Thai male did give him ten batteries, and he thought that the diamonds were contained in the batteries. On receipt of the batteries, he put them in the cassette player. He stayed in Kuala Lumpur for about two days where he met Low. Low then asked him to proceed to Singapore and from there to Vienna and then to Amsterdam. He was also told that Low would meet him in Singapore but should Low fail to turn up, he, the accused, was to proceed to Vienna alone. He was told what flight he was to take, and that he would probably be met by Low or some other person in Vienna..

The accused affirmed what he said in his statement about the content in the batteries; he said he had no doubt that they contained diamonds. Low asked him to take good care of the batteries and if they were not powerful enough, he should augment their strength with other batteries. Hence, he bought five National batteries from a shop opposite Ghim Peng Hotel.

At the time when he was arrested by the narcotics officers at or near the check-in counter at Changi Airport, the accused was found to have in his possession or custody or under his control, amongst other things, ten Hi-Watt batteries, of which eight were later found to contain a total of 242.85 grammes of diamorphine. Under section 18(1) of the Misuse of Drugs Act (Cap. 185, 1985 Ed.) ("the Act") he is, until the contrary is proved, presumed to have had that quantity of drug in his possession, and under section 18(2) he is, again, until the contrary is proved, presumed to have known the nature of that drug. The burden is therefore on him to rebut these presumptions. He said he was engaged by Low to smuggle diamonds and he believed that the Hi-Watt batteries which were handed to him on board the plane contained diamonds. We do not accept his evidence. On his own admission, he knew of the severity of the penalty for drug trafficking in Singapore. When the Hi-Watt batteries were broken up and white powder, instead of diamonds, was found in them, he did not in any way express any shock or surprise; he remained calm. Though he is young, it does not seem to us that he is one who could be so overawed by the presence of narcotics officers that he had become too timid to say at that moment that the white powder contained in the batteries was not what he believed to be. In fact, in the presence of the narcotics officers, he made a devious move by switching on the radio cassette player; the reason for this move is difficult to fathom, but, as we have said, in all probability he was trying to show to the narcotics officers that the radio cassette player was in a working condition, thus hoping to dissuade them from examining the equipment and the batteries within.

It was the evidence of the accused that, both here and in Kuala Lumpur, whenever he went out he did not carry with him the Hi-Watt batteries; he left them in the respective hotel rooms. He did not appear to be over concerned with their safety at all. If he really believed that diamonds were contained in them, in all probability he would have exercised greater care. We would expect him to carry these batteries along with him whenever and wherever he went so as to ensure that they were all the time in his custody and under his control. It would have occurred to him that such quantity of diamonds would have considerable value and

could not, and should not, be left lying around in hotel rooms.

There is one other part of his evidence which is also incredible. He said he was going to Amsterdam to take up an employment procured for him by Low. Since he was going there, he was asked by Low to carry diamonds there one more time and he agreed. If this were true, then he did not appear to be equipped for such a trip; he hardly had any luggage with him and his personal belongings did not appear to be those of a person proceeding overseas to take up an employment.

Having regard to all the evidence, we find that he has failed to rebut the presumptions raised by section 18 of the Act. He therefore had in his possession at the material time 242.85 grammes of diamorphine and under section 17 of the Act he is, until the contrary is proved, presumed to have had in his possession that quantity of diamorphine for the purpose of trafficking therein. It was in evidence that he carried that quantity of diamorphine from Ghim Peng Hotel to Changi Airport, and there was no evidence, and certainly it was not the case of the accused, that that quantity of drugs was for his own consumption. In *Wong Kee Chin* v. *Public Prosecutor*[1] at p. 161, the Court of Criminal Appeal held:

> "... When it is proved that the quantity of diamorphine which the accused person was transporting (in the dictionary sense of the term) was two or more grams, a rebuttable presumption arises under section 15(2) that the accused had the said controlled drug in his possession for the purpose of trafficking. Proof of the act of transporting plus the presumption under section 15(2) would constitute a *prima facie* case of trafficking which if unrebutted would warrant his conviction."

Applying that decision here, a *prima facie* case of trafficking in drugs has been established, and the accused has not rebutted it by any credible evidence.

It was, however, argued on behalf of the accused that, even if we did not accept the evidence of the accused that he believed he was carrying diamonds at the material time, he had not, in law, committed the offence with which he is charged. The argument, if we may paraphrase it, is as follows. The charge is that the accused had trafficked in drugs by transporting them from Ghim Peng Hotel to Changi Airport. On the authority of *Ong Ah Chuan* v. *Public Prosecutor*[2], to which we shall advert shortly in greater detail, the word "transport" in the definition of "traffic" in section 2 of the Act is to be construed not in the ordinary sense of moving or carrying the drugs *per se* from one point to another but, in the context of that definition, in a broader sense of moving the drugs from one point to another for the purpose of distribution or giving them to another person. The act of transporting in that sense necessarily involves two or more persons. In the instant case, the accused did not transport the drugs in that sense from Ghim Peng Hotel to Changi Airport for the purpose of distribution or giving them to anyone there; he was merely moving the drugs and bringing them out of the country. He did not attempt to distribute or give the drugs to anyone at Changi Airport, and there was no intention of his so doing. The evidence relied on in support is this: that at about 7.30 p.m. on October 16, 1984 he checked out of Ghim Peng Hotel and had in his possession 242.85 grammes of diamorphine; that he took a taxi from Ghim Peng Hotel to Changi Airport, and that he then checked in at the appropriate counter and received a boarding pass for the flight to Amsterdam. As a matter of inference, but for the intervention of the narcotics officers he would have boarded the plane and left the country with the drugs in his possession. His destination was abroad and the distribution was intended to take place abroad — in Vienna, Amsterdam or elsewhere. To fall within the meaning of the word "transport" in section 2, the intended destination where the distribution of the drugs is to take place or contemplated must be in Singapore. If the destination is abroad, as in the instant case, the trafficking in drugs by transporting them is committed abroad and the court here has no jurisdiction to try such an offence.

At first blush, this seems an attractive argument but, on further reflection, it cannot be sustained. Under section 2 of the Act, the term "traffic" means:

> "(a) to sell, give, administer, transport, send, deliver or distribute; or
>
> (b) to offer to do anything mentioned in paragraph (a)",

and in this case we are only concerned with the word "transport". This word has been construed authoritatively by the Privy Council in the case of *Ong Ah Chuan* v. *Public Prosecutor*.[2] Lord Diplock, in delivering the judgment of the Board, gave a detailed analysis of the meaning of trafficking and in particular the word "transport", and we think it is helpful to quote *in extenso* the following passage of his judgment at pp. 68 to 69:

"To 'traffic' in a controlled drug so as to constitute the offence of trafficking under section 3 involves something more than passive possession or self-administration of the drug; it involves doing or offering to do an overt act of one or other of the kinds specified in paragraph (a) of the definition of 'traffic' and 'trafficking' in section 2. Even apart from any statutory definition, the ordinary meaning of the verb 'to traffic', in the particular context of trafficking in goods of any kind, imports the existence, either in fact or in contemplation, of at least two parties: a supplier and a person to whom the goods are to be supplied. This concept, involving transfer of possession, is reflected in the statutory definition itself. Of the seven verbs used to describe the various kinds of overt acts which constitute trafficking 'transport' is sandwiched between 'sell, give, administer' which precede it and 'send, deliver or distribute' which follow it. All of these other verbs refer to various ways in which a supplier or distributor, who has drugs in his possession, may transfer possession of them to some other person. 'Transport', although it must involve possession of drugs by the person who transports them, is the only member of the heptad of verbs that is not inconsistent with the retention of possession of the drugs by him after their transport. It must mean moving the drugs from one place to another; it may mean moving them also to another person but it need not do so. Whether it bears the wider or the narrower meaning depends upon the context in which the verb appears. In their Lordships' view the immediate context of the verb 'transport', to which attention has been drawn, attracts the maxim *noscitur a sociis*. This, and the fact that it appears in the definition of the verb to 'traffic', of which the natural meaning in the context of trafficking in goods, involves dealings between two parties at least, and that the evident purpose of the Act is to distinguish between dealers in drugs and the unfortunate addicts who are their victims, all combined to make it clear that 'transport' is not used in the sense of mere conveying or carrying or moving from one place to another but in the sense of doing so to promote the distribution of the drug to another. Supplying or distributing addictive drugs to others is the evil against which section 3 with its draconian penalties is directed.

...

So, simply to transport from one place to another a quantity of a controlled drug intended for one's own consumption, if unauthorized by the Act or Regulations, involves an offence of having the drug in one's possession under section 6 but does not amount to the offence of trafficking under section 3. It is otherwise, however, if the transporter's purpose, whether it is achieved or not, is to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find. This is the consequence of section 10 of the Drugs Act and section 3(c) (which covers the same ground in part). These provisions make the question whether the transporter of the drugs achieves that purpose irrelevant to his guilt of the offence of trafficking under section 3; since they provide that a person who does any act preparatory to, or in furtherance of, or for the purpose of the commission of the offence of trafficking in a controlled drug, shall be guilty of the substantive offence of trafficking and liable on conviction to the penalty provided for it under section 29 and the Second Schedule. This is a very wide description of acts that may be treated as equivalent to the substantive offence of trafficking; nevertheless, in their Lordships' view, it is clear from the structure of the Drugs Act and the distinction drawn between the offence of having a controlled drug in one's possession and the offence of trafficking in it, that mere possession of itself is not to be treated as an act preparatory to or in furtherance of or for the purpose of trafficking so as to permit the conviction of the possessor of the substantive offence. To bring the provisions of sections 10 and 3(c) into operation, some further step or overt act by the accused is needed, directed to transferring possession of the drug to some other person; and it is a consequence of the clandestine nature of the drug trade and the means adopted for the detection of those engaged in it, that the further step that the prosecution is most likely to be able to prove in evidence is the act of the accused in transporting the drug to some place where he intends to deliver it to someone else, whether it be the actual consumer or a distributor or another dealer."

Later he summed up the position as follows:

"(1) The mere act of moving them does not of itself amount to trafficking within the meaning of the definition in section 2; but if the purpose for which they were being moved was to transfer possession from the mover to some other person at their intended destination the mover is guilty of the offence of trafficking under section 3, whether that purpose was achieved or not. This is the effect of the provisions of section 3(c) and section 10.

(2) If the quantity of controlled drugs being moved was in excess of the minimum specified for that drug in section 15, that section creates a rebuttable presumption that such was the purpose for which they were being moved, and the onus lies upon the mover to satisfy the court, upon the balance of probabilities, that he had not intended to part with possession of the drugs to anyone else, but to retain them solely for his own consumption."

One point which has not been explicitly covered in this very comprehensive judgment is the position such as the instant case where the transporter is transporting the drugs out of this country for distribution abroad. But it seems to us that it is implicit in that judgment that such an act of transporting falls within the meaning of "transport" in section 2. As decided there, the test for determining whether an act of transporting drugs from one point to another falls within the meaning of "transport" in section 2 is the purpose for which the drugs are being transported. If the drugs are transported for the purpose of distributing or giving them to one or more persons, known or in contemplation, at the intended destination then that act of transporting falls within the statutory meaning and is an act of trafficking; if, on the other hand, the purpose is for the transporter's own consumption, such act of transporting is not trafficking within the meaning of section 2. Hence, it seems to us that so long as the drugs are trans-

ported for the purpose of distribution, it is immaterial whether the intended distribution takes place here or abroad. We are not, in this case, concerned with the act of distribution but with the act of transporting for the purpose of distribution. The gravamen of the charge in this case is not the act of distributing the drugs but the act of transporting them for the purpose of distribution. Adopting the words of Lord Diplock, if the purpose for which the drugs are being moved is to transfer possession from the mover to some other person known or in contemplation at the intended destination the mover is guilty of the offence of trafficking in drugs, irrespective of whether the purpose is achieved or not and – we would add – irrespective of whether the intended destination is here or abroad. Logically, it must follow that such a mover commits the offence immediately after he has begun his journey of moving the drugs, irrespective whether he reaches his destination or not. Again, adopting the words of Lord Diplock, it is the act of transporting drugs for the purpose of distribution which is one of the evils against which section 5, with its draconian penalties, is directed.

The defence therefore fails. We find the accused guilty of the offence for which he is charged. We convict him accordingly.

Convicted accordingly.

Solicitors: *Leong & Gay.*

BRUNEI REPORT

HAJI HASSAN BIN MUNAP v. PETRODRIL (B) SDN. BHD.

[O.C.J. (O'Connor J.) April 14 to 16, 18 & 20, 1987]

[Bandar Seri Begawan – Suit No. 179 of 1986]

Tort – Negligence – Fatal accident – Liability – Quantum of damages.

This case arose out of an accident that occurred on July 30, 1985 which resulted in the death of Ramli bin Hassan. The action was brought by the administrator of his estate for the benefit of the dependants of the deceased under the Fatal Accident Acts 1846 to 1908 and for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act 1934.

At the time of the accident, the deceased was a crewman on the supply ship "Putra Belait 2" which was moored in the open sea, alongside the barge "Tiga Kali" which in turn was moored to an off-shore rig. Various cargoes were being lifted by a crane on the barge from the supply ship onto the barge when a load of fire steel pipes, each about 30 feet long, fell from the crane and struck the deceased resulting in his death. The defendants, Petrodril (B) Sendirian Berhad, were the owners and operators of the barge "Tiga Kali" and the third party Sharikat Kejuruteraan Bumiputra Belait Sendirian Berhad were the owners and operators of the supply ship "Putra Belait 2", and were also the employers of the deceased.

The action was based on negligence against the defendants and the third party.

Held: (1) the defendants were negligent in the present case;

(2) the deceased was also negligent;

(3) the defendants were 85% liable and the deceased was 15% liable;

(4) as between the defendants and third party, the defendants were 75% liable and the third party 25% liable;

(5) damages were awarded as follows:

Pre-trial loss of earnings	$ 8,500.00
Earnings for lost years	$134,000.00
Loss of expectation of life	$ 6,000.00
Funeral expenses	$ 5,000.00
	$153,000.00

Since the deceased was 15% liable, the figure was reduced to $130,500.00 (a round figure). The third party's liability to the defendant was 25% of the judgment sum.

[*Editorial Note*: The defendants were ordered to pay the plaintiff's costs and the third party was ordered to pay the costs of the third party proceedings.]